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STATE OF CALIFORNIA

DEPARTMENT OF RESOURCES RECYCLING & RECOVERY

In the matter of:

RAUL G. DURAN DBA DURAN'S TIRE  
RECYCLING, OPERATOR and JOSE R.  
PADILLA, PROPERTY OWNER

TPID NO: 1640606-01

RESPONDENTS.

ADMINISTRATIVE COMPLAINT  
FOR WASTE TIRE STORAGE  
ADMINISTRATIVE PENALTIES  
PUBLIC RESOURCES CODE SECTION  
42850, ET SEQ.

AGENCY NO: 2012-011140-ADC

**INTRODUCTION**

This Administrative Complaint for Waste Tire Storage Administrative Penalties is issued by the California Department of Resources Recycling and Recovery (CALRECYCLE) to RAUL G. DURAN DBA DURAN'S TIRE RECYCLING, OPERATOR and JOSE R. PADILLA, PROPERTY OWNER (RESPONDENTS) seeking twenty-one thousand two hundred and fifty dollars (\$21,250.00). CALRECYCLE was formerly the California Integrated Waste Management Board (CIWMB). CALRECYCLE succeeded to CIWMB's authority on January 1, 2010, pursuant to Public Resources Code (PRC) section

1 40401(a)(1). Section 42850(b) of the PRC authorizes CALRECYCLE to issue a  
2 complaint to any person that may be administratively liable. This complaint is so issued  
3 based on the following facts:

4  
5 **STATEMENT OF FACTS**  
6

7 1. CALRECYCLE has authority to inspect, permit, regulate and conduct  
8 enforcement actions against Waste Tire Facilities (WTF) within the State of California  
9 under PRC section 42800, et seq., and attendant regulations contained in Title 14 of the  
10 California Code of Regulations (CCR).

11 2. PRC section 42808 defines a WTF as a "location, other than a solid waste  
12 facility . . . where, at any time, waste tires are stored, stockpiled, accumulated, or  
13 discarded."

14 3. PRC section 42808 (c) defines a minor WTF as a WTF where, at any time,  
15 500 or more, but less than 5,000, waste tires are or will be stored, stockpiled,  
16 accumulated, or discarded.

17 4. 14 CCR section 18420(a) requires the operator of a WTF to acquire a  
18 WTF permit, unless specific conditions are met.

19 5. PRC section 42834 makes it unlawful to direct or transport waste tires to a  
20 minor WTF or to accept waste tires at a minor WTF unless the operator has first  
21 obtained a minor WTF permit.

22 **ILLEGAL WASTE TIRE FACILITY AT 3442 LA GRANDE BLVD.**

23 6. During the time between April 1, 2011, and April 16, 2012,  
24 RESPONDENTS allowed waste tires to be illegally stored at a WTF operated by  
25 RESPONDENT DURAN'S TIRE RECYCLING, and located at 3442 La Grande Blvd.,  
26 Suite C, Sacramento, California 95823 (the site).

27 7. At no time between April 1, 2011 and April 16, 2012 were  
28 RESPONDENTS in possession of a Minor WTF Permit.



1           8.     On April 1, 2011, Sacramento County Tire Enforcement Agency (TEA)  
2 Inspectors Mike Simpson and Ajay Sharma, conducted an inspection of the site. As  
3 documented in Inspection Report #I1-1128113, Inspectors Simpson and Sharma  
4 observed an estimated waste tire count of 2,808 waste tires, in violation of PRC section  
5 42834 and 14 CCR section 18420. A Notice of Violation (NOV) was issued with a  
6 compliance date of May 1, 2011. Raul G. Duran, owner of RESPONDENT DURAN'S  
7 TIRE RECYCLING, was told to reduce his waste tire count to 499 within 30 days or  
8 apply for a WTF permit within seven (7) days to comply with regulations.

9           9.     On May 31, 2011, Inspectors Simpson and Sharma conducted a re-  
10 inspection of the site to determine compliance with the NOV issued on April 1, 2011.  
11 During re-inspection of the site and as documented in Inspection Report # I1-1172409,  
12 Inspectors Simpson and Sharma observed an estimated waste tire count of  
13 approximately 1,080 waste tires, in violation of PRC section 42834 and 14 CCR section  
14 18420. RESPONDENT DURAN'S TIRE RECYCLING was given an extension to  
15 achieve compliance and was advised to either reduce its waste tire count to 499 within  
16 30 days or apply for a WTF permit within seven (7) days.

17          10.    On December 9, 2011, Inspector Sharma conducted a re-inspection of the  
18 site to determine compliance with the extension issued on May 31, 2011, as  
19 documented in Inspection Report # I1-1227005. During the re-inspection, Inspector  
20 Sharma observed an estimated waste tire count of approximately 1,688 waste tires on  
21 the site, in violation of PRC section 42834 and 14 CCR section 18420. RESPONDENT  
22 DURAN'S TIRE RECYCLING had not applied for a WTF permit or reduced its waste tire  
23 count to 499.

24          11.    On March 9, 2012, pursuant to PRC section 42845, CALRECYCLE issued  
25 Clean-Up and Abatement Order No. 2012-011008-CAO (CAO), signed and mailed by  
26 certified mail and served on RESPONDENT DURAN'S TIRE RECYCLING on March 15,  
27 2012, directing RESPONDENT to remove all waste tires in excess of 499 from the  
28 premises within 15 days from the date of the service of the CAO.

1 12. On April 16, 2012, a re-inspection by CALRECYCLE Inspectors John  
2 Duke and Katie Bruner-Benson, was conducted of the site to determine RESPONDENT  
3 DURAN'S TIRE RECYCLING's compliance with the CAO. As documented in  
4 Inspection Report IW-1002046, CALRECYCLE Inspectors John Duke and Katie Bruner-  
5 Benson observed an estimated waste tire count of approximately 2,182 waste tires, in  
6 violation of PRC section 42834 and 14 CCR section 18420.

7  
8 **PRIOR ENFORCEMENT ACTIONS**  
9

10 13. CALRECYCLE adopted the foregoing final Decision and Order 2012-  
11 000357-PEN, effective March 29, 2012, against RESPONDENT DURAN'S TIRE  
12 RECYCLING for violations of PRC sections 42953 and 42961.5 and Title 14 CCR  
13 sections 18451, and, in particular section 18463(d).

14  
15 **ALLEGATIONS OF SPECIFIC VIOLATIONS**  
16

17 14. CALRECYCLE is seeking administrative penalties of twenty-one thousand  
18 two hundred and fifty dollars (\$21,250.00), pursuant to PRC section 42850, based on  
19 the above-mentioned facts and for the following violations as more specifically set forth  
20 in the foregoing paragraphs.

- 21 a. For seventeen (17) days between March 30, 2012, and April 16,  
22 2012, RESPONDENTS failed to comply with the CAO, thereby  
23 violating PRC section 42845, which requires any person, upon  
24 order of CALRECYCLE, to clean-up, abate or otherwise take  
25 remedial action at a WTF.
- 26 b. RESPONDENTS intentionally violated the CAO by knowingly and  
27 purposefully storing more than 499 tires on the site.  
28



- 1 c. On at least four (4) separate occasions RESPONDENTS violated  
2 PRC section 42834 by storing, stockpiling, or accumulating more  
3 than 499, but less than 4,999, waste tires on the site without first  
4 obtaining a Minor WTF Permit. On those same four (4) occasions  
5 RESPONDENTS violated 14 CCR section 18420 by operating a  
6 WTF without first obtaining a WTF Permit.  
7

### 8 PENALTIES

9

10 15. RAUL G. DURAN DBA DURAN'S TIRE RECYCLING, OPERATOR and  
11 JOSE R. PADILLA, PROPERTY OWNER (RESPONDENTS) are liable for  
12 administrative penalties as set forth in PRC section 42850.1 for intentional violations.  
13 RESPONDENTS are subject to an administrative penalty of up to \$10,000 for each day  
14 RESPONDENTS are in violation.

15 16. Pursuant to PRC section 42846.5, the imposition of penalties herein may  
16 form the basis for a subsequent CALRECYCLE order permitting CALRECYCLE or its  
17 contractor's access to the property mentioned herein to perform cleanup, abatement or  
18 remedial work under PRC section 42846. Further, PRC section 42847 authorizes  
19 CALRECYCLE to seek recovery of the costs of any cleanup abatement or remedial  
20 work.

21 17. CALRECYCLE's authority to assess administrative penalties against  
22 RESPONDENTS is set forth in PRC section 42850.1 (b), which states:

23 "(b) (1) Any person who intentionally violates any provision of this chapter,  
24 or any permit, rule, regulation, standard, or requirement issued or adopted  
25 pursuant to this chapter is liable for a civil penalty not to exceed ten  
26 thousand dollars (\$10,000), for each violation of a separate provision or,  
27 for continuing violations, for each day that the violation continues.

28 (2) Liability under this subdivision may be imposed in a civil action or may  
be imposed administratively pursuant to this article."

18. Table 1 of 14 CCR section 18429 authorizes penalties of up to two thousand dollars (\$2,000) per day for every day the intentional violation continues after the deadline set forth in the CAO against unpermitted WTFs that accumulate between five thousand (500) and nine thousand nine hundred ninety nine (4,999) waste tires.

19. In setting an appropriate administrative penalty, the hearing officer must take into consideration the provisions set forth in PRC section 42852.

20. As required by 14 CCR section 18465, in determining an appropriate administrative penalty for RESPONDENTS, CALRECYCLE has taken into consideration the following factors:

- (1) The nature, circumstances, extent, and gravity of the violation.
- (2) Evidence that the violation was willful or negligent.
- (3) The good or bad faith exhibited by the party.
- (4) History of violation of the same or similar nature.
- (5) The extent to which the party has cooperated with the Department in remediating or injury caused by his or her violation.
- (6) The extent that the party has mitigated or attempted to mitigate any damage or injury caused by his or her violation.
- (7) Evidence of any financial gain resulting from the violation.
- (8) Such other matters as justice may require.

21. Accordingly, CALRECYCLE hereby requests that an administrative penalty be assessed against RESPONDENTS in the sum of twenty-one thousand two hundred and fifty dollars (\$21,250.00).

## RIGHT TO HEARING

You are hereby notified that pursuant to the provisions of California Public Resources Code section 42851 and Government Code section 11506, you are entitled to a hearing to refute the allegations against you contained in this Administrative



1 Complaint. If you wish to have a hearing on this matter, you must complete and  
2 return the enclosed REQUEST FOR HEARING to our Legal Office within 15 days  
3 of receipt of this notice. Failure to complete and return the REQUEST FOR  
4 HEARING within 15 days will be deemed a waiver of your rights to a hearing.

5 Pursuant to the above referenced Public Resources Code and Government Code  
6 sections, discovery requests by any party must be made within thirty days after the  
7 service of this Administrative Complaint.

8  
9 Dated this 12 day of December, 2012.

  
MARTHA PEREZ  
Staff Counsel

STATE OF CALIFORNIA

CALIFORNIA DEPARTMENT OF RESOURCES RECYCLING & RECOVERY

In the matter of:

RAUL G. DURAN DBA DURAN'S TIRE  
RECYCLING, OPERATOR and JOSE R.  
PADILLA, PROPERTY OWNER

TPID NO: 1640606-01

RESPONDENTS.

**REQUEST FOR A HEARING**

AGENCY NO: 2012-011140-ADC

I, \_\_\_\_\_, in the above-entitled proceeding, acknowledge receipt of a  
copy of the ADMINISTRATIVE COMPLAINT FOR WASTE TIRE STORAGE  
ADMINISTRATIVE PENALTIES.

I hereby request a hearing to permit me to present my defense to the charges  
contained in said ADMINISTRATIVE COMPLAINT FOR WASTE TIRE STORAGE  
ADMINISTRATIVE PENALTIES.

All correspondence concerning this proceeding should be sent to the following  
address:

(If you are represented by an attorney, all correspondence concerning this matter will be sent  
to the attorney.)

Address: \_\_\_\_\_ Telephone: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Please send to:

CalRecycle Legal Office  
Attention: Gloria Bell  
P.O. Box 4025, MS 24-B  
Sacramento, CA 95812-4125





## DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY

801 K STREET, MS 19-01, SACRAMENTO, CALIFORNIA 95814 • (916) 322-4027 • [WWW.CALRECYCLE.CA.GOV](http://WWW.CALRECYCLE.CA.GOV)

### RIGHT TO A HEARING

Your are hereby notified that pursuant to the provisions of Section 42960 of the California Public Resources Code that you are entitled to a hearing to refute the allegations against you contained in the ADMINISTRATIVE COMPLAINT FOR WASTE TIRE STORAGE ADMINISTRATIVE PENALTIES. **If you wish to have a hearing on this matter, you must complete and return the enclosed REQUEST FOR HEARING to our Legal Office within 15 days of receipt of this notice. Failure to complete and return the REQUEST FOR HEARING within 15 days will be deemed a waiver of your right to a hearing.**

### HEARING PROCEDURES

If you request one, a hearing will be conducted before an Administrative Law Judge of the Office of Administrative Hearings of the Department of General Services, at one of their office locations throughout the State, upon the charges made in the ADMINISTRATIVE COMPLAINT FOR WASTE TIRE STORAGE ADMINISTRATIVE PENALTIES.

1. You may be present at the hearing.
2. You have the right to be represented by an attorney at your own expense.

You are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent yourself without legal counsel.



3. You may present any relevant evidence, and will be given full opportunity to cross-examine all witnesses testifying against you.
4. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents, or other things by applying to the Office of Administrative Hearings.
5. Pursuant to 1 California Code of Regulations, section 1032, parties are entitled, upon request, to be provided with the assistance of an interpreter if they do not proficiently speak or understand the English language. If you require the assistance of an interpreter, timely notice of this fact should be given to our office so that appropriate arrangements can be made.
6. You are hereby further notified that pursuant to the provisions of 14 CCR section 17050 et seq. the violations alleged against you may cause you to be placed on the CalRecycle's Unreliable Contractors, Subcontractors, Borrowers, and Grantees list. Placement on this list may prohibit you from obtaining contracts, loans, or grants from the CalRecycle for a period up to three years.
7. Continuances are not favored. If you need a continuance, write or call immediately to the Office of Administrative Hearings, 2349 Gateway Oaks Drive, Suite 200, Sacramento, California 95833 (916) 263-0550. That agency has control of continuances. Requests without good cause will be denied.